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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RICHARD D. EMMERSON)	Civil No. 08 CV 1439 W (WMc)
AND M. HELEN EMMERSON,)	
)	REDACTED COMPLAINT FOR REFUND
Plaintiffs,)	AND ABATEMENT OF TAX
)	
vs.)	DEMAND FOR JURY TRIAL
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

COMPLAINT

Richard D. Emmerson and M. Helen Emmerson, as Plaintiffs (the "Plaintiffs"), by and through their attorneys, Richard V. Vermazen and Lauren A. Rinsky, hereby allege against United States of America as Defendant (the "Defendant"), as follows:

Nature of Complaint

1. This is a civil cause of action against the United States of America and is based upon 26 U.S.C.A. § 7422(a) which provides for actions by taxpayers for the recovery of any internal revenue tax alleged to have been erroneously or illegally assessed or collected, or of any penalty

1 claimed to have been collected without authority, or of any sum alleged to have been excessive
2 or in any manner wrongfully collected.

3 Jurisdiction

4 2. The District Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
5 §§ 1340, 1346(a)(1), which provides that the District Court has shall have original jurisdiction of
6 any civil action arising under any act of Congress providing for internal revenue and for the
7 recovery of any internal revenue tax alleged to have been collected without authority, or any sum
8 alleged to have been excessive or in any manner wrongfully collected under the Internal Revenue
9 laws.

10 Venue

11 3. Plaintiffs, Richard D. Emmerson and M. Helen Emmerson, are citizens of the United
12 States and reside at 4612 Rancho Reposo, Del Mar, California 92014, and therefore venue is
13 proper in the Southern District of California.

14 Procedural Facts

15 4. The full amount of the tax, penalties, and interest in question was paid by the Plaintiffs
16 to the District Director of Internal Revenue at Fresno, California prior to filing a refund claim.
17 The amounts of the penalties for the 1999 tax year plus interest paid by the Plaintiffs which are
18 demanded to be refunded to the Plaintiffs are as follows:

<u>Penalty/Interest</u>	<u>Tax Year</u>	<u>Payment Amount</u>
26 U.S.C. §6651(a)(1)	1999	\$42,003.63
26 U.S.C. §6651(a)(2)	1999	\$14,001.21
Interest Charged	1999	\$129,609.14
Interest on Overpayment	1999	<u>\$3,445.66</u>
	TOTAL	\$189,059.64

1 Additional taxes and penalties for the 1999 tax year have been assessed were paid in full by
2 Plaintiffs; however only penalties and interest in the amount of \$189,059.64 are subject to the
3 abatement and refund demand of Plaintiffs.

4 5. Subsequent to the payments set out above in paragraph 12, no further payments,
5 refunds or credits of tax, or interest for the tax period at issue have been made.

6 6. On September 27, 2005, the Plaintiffs filed a timely IRS Form 843, Claim for Refund
7 and Request for Abatement together with documentation in support of the Plaintiffs' position,
8 attached hereto as Exhibit A and incorporated by reference, with the Internal Revenue Service
9 for the penalties and interest paid by the Plaintiffs for the 1999 tax year.

10 7. On or about August 15, 2006, the Internal Revenue Service issued a letter (IRS Form
11 LTR 854C) denying the Plaintiffs' claim for refund (see Exhibit B).

12 **Relevant Facts**

13 8. During the year at issue, the Plaintiffs employed an accountant, Bill Boettger, CPA, to
14 prepare and file their 1999 tax return.

15 9. Without extensions, the Plaintiffs 1999 tax return would have been due April 15, 2000.

16 10. It is not disputed that the Plaintiffs timely filed an extension with the Internal
17 Revenue Service to extend the due date for their 1999 tax return to August 15, 2000. Further it is
18 not disputed that the tax return was filed on or before October 16, 2000. The essence of the
19 dispute is whether the Plaintiffs filed a "second extension" to extend the due date from August
20 15, 2000 to October 16, 2000, as October 15, 2000 was a Sunday.

21 11. The Plaintiffs adamantly believe that their CPA tax preparer filed a second extension,
22 IRS Form 2688, Application for Additional Extension of Time To File U.S. Individual Income
23 Tax Return, in a timely fashion for the Plaintiffs, requesting an extension of time until October
24 15, 2000, for the Plaintiffs' to file their 1999 tax return.

25 12. Pursuant to the second extension, the Plaintiffs filed their Form 1040 for the 1999 tax
26 year on or before the extended due date of October 16, 2000.

27 13. Although the Plaintiffs have provided the Internal Revenue Service with various
28 documents and testimony to prove that the second extension request was prepared and timely

1 filed, it is the position of the Internal Revenue Service that a second extension was not timely
2 filed because the Plaintiffs have not been able to provide the Internal Revenue Service with a
3 copy of an approved second extension from the Internal Revenue Service.

4 14. The Plaintiffs entered into the Internal Revenue Service's Announcement 2004-46
5 Settlement Initiative Program ("Settlement Initiative Program") for the 1999 tax year. Upon
6 completion of the settlement, the Plaintiffs were assessed additional tax of \$628,329.00, as well
7 as a 10% 26 U.S.C. §6662(a) penalty in the amount of \$62,833.00, a 26 U.S.C. §6651(a)(1) late
8 filing penalty in the amount of \$42,003.63, a 26 U.S.C. §6651(a) (2) late-payment penalty in the
9 amount of \$14,001.21.21, and interest calculated continuously from April 15, 2000 through the
10 date of the settlement.

11 15. The Plaintiffs entered into the Settlement Initiative Program with the understanding
12 that no penalties other than the 10% 26 U.S.C. §6662(a) penalty would be assessed. There was
13 no mention of a late-payment penalty assessment.

14 **Improper Actions By Defendant United States of America**

15 16. The assessment of a 26 U.S.C. §6651(a)(1) late-filing penalty and a 26 U.S.C.
16 §6651(a)(2) late-payment penalty against Richard D. Emmerson and M. Helen Emmerson for the
17 1999 tax year was improper since a timely extension was filed with the Internal Revenue Service
18 to extend the due date of their 1999 individual tax return from August 15, 2000 to October 16,
19 2000, and their 1999 individual tax return was filed on or before October 16, 2000. Therefore,
20 the Plaintiffs are entitled to abatement and refund of the \$189,059.64 penalties and interest paid
21 for the 1999 tax year, which amount includes interest due to the Plaintiffs of \$3,445.66 on the
22 overpayments made, calculated through September 15, 2005.

23 17. The assessment of a 26 U.S.C. §6651(a)(1) late-filing penalty and a 26 U.S.C.
24 §6651(a)(2) late-payment penalty against Richard D. Emmerson and M. Helen Emmerson for the
25 1999 tax year was improper even if the Court concludes based upon the evidence that a valid
26 second extension was not filed because Richard D. Emmerson and M. Helen Emmerson
27 exercised reasonable and prudent oversight in the hiring and employment of their tax preparer, so
28 that a failure to file a valid second extension would be excusable under a reasonable cause

1 standard. Therefore, the Plaintiffs are entitled to abatement and refund of the \$189,059.64
2 penalties and interest paid for the 1999 tax year, which amount includes interest due to the
3 Plaintiffs of \$3,445.66 on the overpayments made, calculated through September 15, 2005.

4 18. The assessment of the 26 U.S.C. §6651(a)(1) late-filing penalty against Richard D.
5 Emmerson and M. Helen Emmerson and corresponding interest calculated continuously from
6 April 15, 2000 was improper since Richard D. Emmerson and M. Helen Emmerson timely filed
7 an extension with the Internal Revenue Service to extend the due date for their 1999 tax return
8 until August 15, 2000. Thus, even if the Court concludes based on the evidence that a second
9 extension was not filed, Richard D. Emmerson's and M. Helen Emmerson's 1999 tax return
10 would not have been "late" until after August 15, 2000. Therefore, the Plaintiffs are entitled to
11 abatement and refund of amounts paid attributable to the 26 U.S.C. §6651(a)(1) late-filing
12 penalty for the 1999 tax year.

13 19. The assessment of the 26 U.S.C. §6651(a)(2) late-payment penalty against Richard D.
14 Emmerson and M. Helen Emmerson and corresponding interest calculated continuously from
15 April 15, 2000 was improper since Richard D. Emmerson and M. Helen Emmerson timely filed
16 an extension with the Internal Revenue Service to extend the due date for their 1999 tax return
17 until August 15, 2000. Thus, even if the Court concludes based on the evidence that a second
18 extension was not filed, Richard D. Emmerson's and M. Helen Emmerson's 1999 tax return
19 would not have been "late" until after August 15, 2000. Therefore, the Plaintiffs are entitled to
20 abatement and refund of amounts paid attributable to the 26 U.S.C. §6651(a)(2) late-payment
21 penalty for the 1999 tax year.

22 20. The Plaintiffs have incurred and continue to incur attorneys' fees in this action.

23 WHEREFORE, the Plaintiff respectfully requests the following relief:

24 A. Judgment for Plaintiff and against the Defendant, United States of America, upon the
25 facts and law in the total amount of \$189,059.64, or such greater amount as may be legally
26 payable, with interest thereon as provided by law;

27 B. Reimbursement by Defendant to Plaintiff of all of their attorneys' fees and costs in this
28 action pursuant to 28 U.S.C. §2412(b) and 26 U.S.C. §7430;

1 C. Such other relief as this Court deems just and appropriate.
2

3 Dated: August 27, 2008
4

5 By: s/ Richard V. Vermazen
6 Richard V. Vermazen,
7 Attorney for Plaintiffs
8

9 By: s/ Lauren A. Rinsky
10 Lauren A. Rinsky,
11 Attorney for Plaintiffs
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List of Exhibits

<u>Exhibit</u>	<u>Page Numbers</u>	<u>Type of Document</u>
A	8 to 62	Claim for Refund and Request for Abatement (IRS Form 843 together with documentation in support of Plaintiffs' position) for tax period ending December 31, 1999.
B	63 to 64	IRS denial of Claim for Refund (IRS Form LTR 854C, dated August 14, 2006) for tax period ending December 31, 1999.

Form **843**
(Rev. November 2002)
Department of the Treasury
Internal Revenue Service

Claim for Refund and Request for Abatement

OMB No. 1545-0024

▶ See separate instructions.

Use Form 843 only if your claim involves (a) one of the taxes shown on line 3a or (b) a refund or abatement of interest, penalties, or additions to tax on line 4a.

Do not use Form 843 if your claim is for—

- An overpayment of income taxes;
- A refund for nontaxable use (or sales) of fuel; or
- An overpayment of excise taxes reported on Form(s) 11-C, 720, 730, or 2290.

Type or print	Name of claimant RICHARD D. EMMERSON & M. HELEN EMMERSON	Your SSN or ITIN [REDACTED]
	Address (number, street, and room or suite no.) 4612 RANCHO REPOSO	Spouse's SSN or ITIN [REDACTED]
	City or town, state, and ZIP code DEL MAR, CA 92014	Employer identification number (EIN) :
	Name and address shown on return if different from above SAME	Daytime telephone number (858) 945-5728
1 Period. Prepare a separate Form 843 for each tax period From 01 / 01 / 1999 to 12 / 31 / 1999		2 Amount to be refunded or abated \$ 189,059.64

3a Type of tax, penalty, or addition to tax:

- ☐ Employment ☐ Estate ☐ Gift ☐ Excise (see instructions)
☒ Penalty—IRC section ▶ **6651(a)(1) & (2)**

b Type of return filed (see instructions):

- ☐ 706 ☐ 709 ☐ 940 ☐ 941 ☐ 943 ☐ 945 ☐ 990-PF ☐ 4720 ☒ Other (specify) **1040**

4a Request for abatement or refund of:

- ☐ Interest as a result of IRS errors or delays.
☐ A penalty or addition to tax as a result of erroneous advice from the IRS.

b Dates of payment ▶

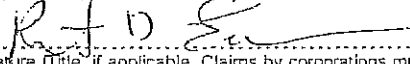
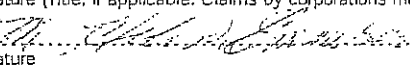
5 Explanation and additional claims. Explain why you believe this claim should be allowed, and show computation of tax refund or abatement of interest, penalty, or addition to tax. If you need more space, attach additional sheets.

SEE ATTACHED STATEMENT FOR EXPLANATION AND CALCULATION OF AMOUNT TO BE ABATED.

COPY

Signature. If you are filing Form 843 to request a refund or abatement relating to a joint return, both you and your spouse must sign the claim. Claims filed by corporations must be signed by a corporate officer authorized to sign, and the signature must be accompanied by the officer's title.

Under penalties of perjury, I declare that I have examined this claim, including accompanying schedules and statements, and, to the best of my knowledge and belief, it is true, correct, and complete.

Signature 	Date 9-27-05
Signature 	Date 9-27-05

Richard D. & M. Helen Emmerson

[REDACTED]

FORM 843 – LINE 5

The taxpayers entered into the Internal Revenue Service's Announcement 2004-46 Settlement Initiative Program for the 1999 tax year. Upon completion of the settlement, the taxpayers were assessed additional tax of \$628,329, a 10 percent IRC Section 6662(a) penalty of \$62,833, a Section 6651(a)(1) late-filing penalty of \$42,003.63, a Section 6651(a)(2) late-payment penalty of \$14,001.21, and interest calculated continuously from April 15, 2000 through the date of the settlement.

The taxpayers agreed with the Service's assessment of the additional tax and the 10% Section 6662(a) penalty, pursuant to the Settlement Initiative program. The taxpayers, however, do not agree with the assessment of the Section 6651(a)(1) and Section 6651(a)(2) penalties. In addition, the taxpayers believe that IRC Section 6404(g) should be in effect for the calculation of interest on the assessment. Section 6404(g) would suspend the calculation of interest after 18 months from the time the return was filed.

The taxpayers' Form 1040 for the 1999 tax year was filed by the second extended due date, October 16, 2000. It is the Service's position that no Form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return, was timely filed by the taxpayer. We provided the Revenue Agent with various documents to prove that the second extension request was prepared and filed and that the late-filing and late-payment penalties should be abated. The Revenue Agent rejected our documentary evidence since we did not have a copy of an approved extension and proceeded with the assessment.

Attached are the various documents we provided to the Agent as evidence of the filing of the second extension. Unfortunately, an approved extension was not received from the Internal Revenue Service. It appears that the Service itself also does not have a copy of the extension. However, based on the evidence provided, it is clear that a second extension request was prepared and mailed (timely mailing is considered timely filing).

Additionally, the taxpayers entered into the Service's Settlement Initiative program with the understanding that no penalties other than the 10% Section 6662(a) penalty would be assessed. There was no mention of a late-payment penalty assessment. The assessment of a late-payment penalty is counter to the purpose of the Service's Settlement Initiative, which was to quickly and easily resolve tax disputes related to certain transactions that the Service considered abusive.

Attached is the calculation for the abatement of the late-filing and late-payment penalty and for the abatement of the additional interest that was assessed

Richard D. & M. Helen Emmerson

[REDACTED]

because the Service did not suspend the running of interest under Section 6404(g).

Based on the above and the calculation attached, the taxpayers are requesting abatement of \$189,059.64 of penalties and interest paid for the 1999 tax year. This includes interest due to the taxpayer of \$3,445.66 on the overpayments made, calculated through September 15, 2005.

Richard D. & M. Helen Emmerson

[REDACTED]

SCHEDULE OF ATTACHMENTS TO FORM 843

1. Calculation of abatement amount.
2. Copy of Form 2688 for Richard D. and M. Helen Emmerson for the 1999 tax year.
3. Letter dated November 18, 2004 to David Catalini of the Internal Revenue Service from Bill Boettger.
4. Letter dated January 27, 2005 to David Catalini and Joseph Kennedy of the Internal Revenue Service from Ernest S. Ryder.
5. Declaration of William C. Boettger.
6. Declaration of Kimberly M. Swelgin.
7. Tax Dockets prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
8. Tax Return Transmittal/Instruction Sheets prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
9. Approved Form 2688 Extensions prepared by Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, and Robert M. Tague.
10. Billing Worksheets/Timesheets from Harlan & Boettger, LLP for Robert B. Clark, James L. Kelley, Robert M. Tague, and Richard & Helen Emmerson.
11. Form 2848, Power of Attorney and Declaration of Representative.

1

Richard D. & M. Helen Emmerson

[REDACTED]

Form 843

Year 1999

Calculation of abatement amount

	<u>Per IRS</u>	<u>Per 843</u>	<u>Difference</u>
Additional tax	628,329.00	628,329.00	-
6662(a) penalty	62,833.00	62,833.00	-
6651(a)(1) penalty	42,003.63	-	(42,003.63)
6651(a)(2) penalty	14,001.21	-	(14,001.21)
Interest charged	264,930.85	135,321.71	(129,609.14)
Interest on overpayment	-	(3,445.66)	(3,445.66)
Total	<u>1,012,097.69</u>	<u>823,038.05</u>	<u>(189,059.64)</u>

See the attached schedule for the calculation of interest for the Form 843 Column.

INTEREST AND PENALTY DETAIL REPORT

Taxpayer name....: Emmerson 843 calculation

Taxpayer ID#.....: [REDACTED]

09-21-05

Page 1

Events	Date	Amount	Event Date Balance (1)
Additional tax	04-15-00	628,329.00	628,329.00
Sec 6662(a)	10-15-00	62,833.00	720,079.00
Sec 6404(g)	04-15-02		806,713.20
2004 Jobs Act	10-04-04		806,713.20
Payment	03-30-05	<826,596.91>	<113.20>
Payment	04-22-05	<109,815.14>	<109,928.77>
Payment	07-15-05	<75,685.64>	<187,142.73>
Interest Computation Date	09-15-05		<189,059.64>

(1) Balance includes any interest and penalties accrued as of the Event Date

Interest Detail

Event	Date	Rate	Base	Interest	Balance
Additional tax	04-15-00		628,329.00		628,329.00
Interest	06-30-00	9.00	628,329.00	11,851.48	640,180.48
Interest	09-30-00	9.00	640,180.48	14,646.01	654,826.49
Interest	12-31-00	9.00	654,826.49	14,981.08	669,807.57
Interest	03-31-01	9.00	669,807.57	15,028.51	684,836.08
Interest	06-30-01	8.00	684,836.08	13,794.80	698,630.88
Interest	09-30-01	7.00	698,630.88	12,434.71	711,065.59
Interest	12-31-01	7.00	711,065.59	12,656.03	723,721.62
Interest	03-31-02	6.00	723,721.62	10,785.82	734,507.44
Interest	04-15-02	6.00	734,507.44	1,813.20	736,320.64
Sec 6404(g)	04-15-02				736,320.64
Interest	06-30-02	6.00	736,320.64		736,320.64
Interest	09-30-02	6.00	736,320.64		736,320.64
Interest	12-31-02	6.00	736,320.64		736,320.64
Interest	03-31-03	5.00	736,320.64		736,320.64
Interest	06-30-03	5.00	736,320.64		736,320.64
Interest	09-30-03	5.00	736,320.64		736,320.64
Interest	12-31-03	4.00	736,320.64		736,320.64
Interest	03-31-04	4.00	736,320.64		736,320.64
Interest	06-30-04	5.00	736,320.64		736,320.64
Interest	09-30-04	4.00	736,320.64		736,320.64
Interest	10-04-04	5.00	736,320.64		736,320.64
2004 Jobs Act	10-04-04				745,225.39
Interest	12-31-04	5.00	736,320.64	8,904.75	754,366.00
Interest	03-30-05	5.00	745,225.39	9,140.61	754,366.00
Payment	03-30-05		<754,479.20>		<113.20>
Interest	03-31-05	5.00	<113.20>	<0.02>	<113.22>
Interest	04-22-05	6.00	<113.22>	<0.41>	<113.63>
Payment	04-22-05		<109,815.14>		<109,928.77>
Interest	07-15-05	6.00	<109,928.77>	<1,528.32>	<111,457.09>
Payment	07-15-05		<75,685.64>		<187,142.73>

INTEREST AND PENALTY DETAIL REPORT Taxpayer Interest Version 2005.1
 Taxpayer name....: Emmersor 843 calculation 09-21-05
 Taxpayer ID#.....: [REDACTED] Page 2

Interest Detail

Event	Date	Rate	Base	Interest	Balance
Interest	09-15-05	6.00	<187,142.73>	<1,916.91>	<189,059.64>

Interest on Penalties

Event	Date	Rate	Base	Interest	Balance
Sec 6662(a)	10-15-00		62,833.00		62,833.00
Interest	12-31-00	9.00	62,833.00	1,200.89	64,033.89
Interest	03-31-01	9.00	64,033.89	1,436.73	65,470.62
Interest	06-30-01	8.00	65,470.62	1,318.79	66,789.41
Interest	09-30-01	7.00	66,789.41	1,188.76	67,978.17
Interest	12-31-01	7.00	67,978.17	1,209.92	69,188.09
Interest	03-31-02	6.00	69,188.09	1,031.13	70,219.22
Interest	04-15-02	6.00	70,219.22	173.34	70,392.56
Sec 6404(g)	04-15-02				
Interest	06-30-02	6.00	70,392.56		70,392.56
Interest	09-30-02	6.00	70,392.56		70,392.56
Interest	12-31-02	6.00	70,392.56		70,392.56
Interest	03-31-03	5.00	70,392.56		70,392.56
Interest	06-30-03	5.00	70,392.56		70,392.56
Interest	09-30-03	5.00	70,392.56		70,392.56
Interest	12-31-03	4.00	70,392.56		70,392.56
Interest	03-31-04	4.00	70,392.56		70,392.56
Interest	06-30-04	5.00	70,392.56		70,392.56
Interest	09-30-04	4.00	70,392.56		70,392.56
Interest	10-04-04	5.00	70,392.56		70,392.56
2004 Jobs Act	10-04-04				
Interest	12-31-04	5.00	70,392.56	851.30	71,243.86
Interest	03-30-05	5.00	71,243.86	873.85	72,117.71
Payment	03-30-05		<72,117.71>		0.00
Interest	03-31-05	5.00			0.00
Interest	09-15-05	6.00			0.00

INTEREST AND PENALTY DETAIL REPORT

Taxinterest Version 2005.1

Taxpayer name...: Emmerson 843 calculation

09-21-05

Taxpayer ID#....: [REDACTED]

Page 3

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----- Summary as of 09-15-05 -----
              Amount      Payments      Deposits      Balance
Tax          628,329.00    <813,942.98>      0.00    <185,613.98>
Interest     126,037.00    <126,037.00>      0.00      0.00
Refund interest    <3,445.66>      0.00      0.00    <3,445.66>
Penalty interest    9,284.71    <9,284.71>      0.00      0.00
Entered penalties  62,833.00    <62,833.00>      0.00      0.00
-----
Totals          823,038.05    <1,012,097.69>      0.00    <189,059.64>
=====

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Prepared using: FEDERAL IRS interest rates
Table end date: 06-30-05 USER Table

2

Form **2688**Department of the Treasury
Internal Revenue ServiceApplicant for Additional Extension of Time To File
U.S. Individual Income Tax Return

See instructions on back.

You MUST complete all items that apply to you.

1999

Please type or print.	Your first name and initial	Last name	Your social security number
	RICHARD D	EMMERSON	[REDACTED]
	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
	M. HELEN	EMMERSON	[REDACTED]
File by the due date for filing your return.	Home address (number and street)		
	4612 RANCHO REPOSO		
	City, town, or post office, state, and ZIP code		
	DEL MAR, CA 92014		

Please fill in the Return Label at the bottom of this page.

- 1 I request an extension of time until OCTOBER 15 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.
- 2 Explain why you need an extension. You must give an adequate explanation ►
ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE
A COMPLETE AND ACCURATE RETURN.
- 3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? ☒ Yes ☐ No
 If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

- 4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally due by April 17, 2000, see the instructions and check here
- | | |
|--|--|
| Yourself <input type="checkbox"/>
Spouse <input type="checkbox"/> | <input type="checkbox"/>
<input type="checkbox"/> |
|--|--|

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer ► _____ Date ► _____

Signature of spouse ► _____ Date ► _____
 (if filing jointly, BOTH must sign even if only one had income).

Signature of preparer other than taxpayer ► _____ Date ► _____

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

(Do not detach)

Notice to Applicant To Be Completed by the IRS	<input type="checkbox"/> We HAVE approved your application.
	<input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____. This grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided in item 2 above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return.
	<input type="checkbox"/> Other _____

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name.	Taxpayer's social security number
	HARLAN & BOETTGER LLP	[REDACTED]
	RICHARD D EMMERSON & M. HELEN EMMERSON	Spouse's social security number
	Number and street (include suite, room, or apt. no.) or P.O. box number	[REDACTED]
	5415 OBERLIN DRIVE	
	City, town, or post office, state, and ZIP code	AGENTS: Always include taxpayer's name on Return Label.
	SAN DIEGO, CA 92121	

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

3

SENT VIA FAX - (781) 835-4001

November 18, 2004

To: David Catalini
Internal Revenue Agent

Re: Richard and Helen Emmerson
Tax Year: 1999

Dear David:

Got your voice message that you left yesterday and I am a little surprised. You sent us your portion of the papers relating to the Emmersons on November 1, 2004 and I thought we had till November 30, 2004 to get the signed papers back to you.

I realize that the issue that I am questioning is the assertion of the late filing penalty and I told you that we were attempting to find the Emmerson's 1999 file. The firm is in the process of moving and the 1999 file was temporarily misplaced. I also believe Dave Gibbs has relayed this same message to you.

Regardless, we have found the missing file and I am happy to report that a second extension application was filed on August 15, 2000 for the Emmersons. As a matter of fact I was the one who signed the application as per the copy of our tax docket that I am enclosing. Further, I am enclosing a copy of the instruction sheet that was sent to the client when we sent them their 1999 tax returns which shows the due date of the return to be October 16, 2000. Had no second extension been requested, the instructions would have noted to file the return as soon as possible. The file does not contain a copy of the extension request since the approved extension would have been attached to the filed return.

Our firm's policy for the preparation of tax returns, extensions, etc. was as follows:

A preparer would be assigned to prepare the item,

A reviewer would be assigned to review the item,

The completed item would be given to the partner for the final review and signature,

And the item would be sent to the client for their signature and filing.

In the case of extensions without any tax due, we (the firm) would prepare, sign and file the extension request from our office. If the extension were due within five days of when prepared, a person would be sent to the post office and deposit the envelope in the mail.

Page 2, David Catalini, IRS Agent

The firm's procedures for preparing and filing the Emmerson's second extension were followed based on the docket. The docket indicates that the extension application was prepared, reviewed and signed and sent to the IRS. I was the person who signed the extension application on August 15 and sent it directly to the IRS. The envelope with the extension would have been deposited in the mail at the main post office. (I can't say I took this envelope to the Post Office on August 15, 2000 but I did take the mail to the Post Office on many April 15, June 15, August 15, Sept. 15 and Oct 15 – so I could have taken this envelope to the Post Office.)

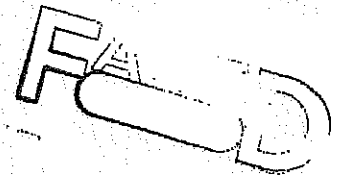
Hopefully this is sufficient to cover this issue. If it is not, please tell me what additional information you need in order to eliminate the assertion of this penalty.

Sorry that we have not been able to talk this past week or so as my schedule for the last few weeks has been hectic. I will be out of the office tomorrow (Nov 19) morning till 8:30 or 9:00 – client meeting - and then be gone to another client meeting around 11:00 AM back in the late afternoon. If you call and I am not here, please leave a message and we will talk on Monday, Nov 22.

Thanks, Bill Boettger

4

LAW OFFICES
OF
ERNEST S. RYDER & ASSOCIATES, INC.
A PROFESSIONAL LAW CORPORATION
11440 WEST BERNARDO COURT, SUITE 170
SAN DIEGO, CALIFORNIA 92127
TELEPHONE (858) 674-8000
FAX (858) 674-0788



January 27, 2005

Mr. David Catalini
Mr. Joseph Kennedy
INTERNAL REVENUE SERVICE
One Montvale Avenue, Group 1745
Stoneham, MA 02180-3565

Via Facsimile (781) 835-4001 & US Mail

Re: Richard & Helen Emmerson
1999 Tax Year

Dear Mr. Catalini and Mr. Kennedy,

We are writing to demonstrate that the accounting firm of Harlan & Boettger timely filed an IRS Form 2688 for Richard and Helen Emmerson on August 15, 2000. Based upon our prior discussions, you have asked us to provide some evidence that an extension was in fact prepared, processed and timely filed.

Since a copy of the Emmerson's approved extension is not available, we asked Mr. Boettger to review his files for other clients for whom the firm filed extensions on or about August 15, 2000, so that we could demonstrate a course of conduct which should convince you that the extension was in fact prepared, processed and timely filed. In this regard, Mr. Boettger provided us with documentation for the following three clients other than the Emmersons:

1. Robert B. Clark
2. James L. Kelley
3. Robert M. Tague

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 2

Enclosed herewith please find copies of approved IRS Forms 2688 for these other three clients of the accounting firm.

With these copies in hand, you know in fact that these extensions were prepared, processed and timely filed with the IRS, since the IRS approved each extension and returned them to either the firm or the taxpayer. By providing you with copies of these extensions and the other materials described below, we can demonstrate a course of conduct that should convince you that an extension was in fact prepared, processed and timely filed for the Emmersons. As you can see, each of these extensions was signed by Mr. Boettger on either August 14, 2000 or August 15, 2000.

As we understand, when the accounting firm prepares a tax form, it starts with a document referred to internally as a "Tax Docket". The Tax Docket is a document included in each client's file to track the work in progress for each tax form which is prepared and processed by the firm. Generally, each person who works on the project indicates his or her involvement, the date of that involvement and an identification of the task performed (in this case, the preparation of the IRS Form 2688, the second request for an extension of time to file the return). Each Tax Docket is dated and signed contemporaneously with the completion of the task performed.

For each of the three other clients identified above, enclosed herewith please find a copy of the relevant Tax Docket which in each case was signed contemporaneously by Mr. Boettger at the time he signed the extension, and which further indicates that the extension was sent to the IRS. In each case, you know in fact that the Tax Docket is true and correct since you have in hand a copy of the relevant approved extension to which the Tax Docket relates. Similarly, enclosed herewith is the Tax Docket for the

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 3

Emmersons which is dated and signed by Mr. Boettger, and indicates that the extension was sent to the IRS on August 15, 2000.

In addition, for each of the three other clients identified above, enclosed please find a copy of the Billing Worksheet/Timesheet which indicates that an extension was prepared by a member of the firm. Again, you know in fact that the Billing Worksheet/Timesheet is true and correct since you have in hand a copy of the approved extension for each client. Similarly, enclosed herewith is a Billing Worksheet/Timesheet for the Emmersons which also indicates that the extension was prepared and processed on August 15, 2000.

Please note that the dates on each approved extension, and the relevant Tax Docket and Billing Worksheet/Timesheet all correspond and are consistent for each client as performed on either August 14, 2000 or August 15, 2000. Similarly, the dates for the Emmersons on their Tax Docket and their Billing Worksheet/Timesheet correspond and are consistent with the task being performed on August 15, 2000.

As we have discussed, based upon our actual experience, it is not unusual for an extension request which is timely filed to not be returned by the IRS with an approval, so it was not considered unusual for an approved extension to not be returned to the Emmersons.

Further, consistent with an extension being filed for each of the three other clients identified above, enclosed please find the transmittal/filing instruction sheet that went to each client with the final IRS Form 1040 return as prepared by the firm. Please note that each instruction sheet states:

"File your signed return by October 15 [or October 16] ..."

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 4

This is the language that is included on the instruction sheet for each client of the firm when an extension has been filed, whether or not an approved extension is returned by the IRS. Mr. Boettger has advised us that when an extension has not been filed, the instruction sheet would state:

“File your signed return as soon as possible...”

In this regard, enclosed also please find the instruction sheet which accompanied the return for the Emmersons. You will note that the instruction sheet reads:

“File your signed return by October 16 ...”

Just like the three other client situations where you know the extensions were in fact filed since you have a copy of the approved extensions in hand, you should have the confidence that the accounting firm's course of conduct from the Tax Docket through the Billing Worksheet/Timesheet to the filing instruction sheet all show that similarly an extension was timely filed for the Emmersons.

Finally, enclosed herewith please find a declaration under penalty of perjury executed by Mr. Boettger to the effect that he did in fact sign an IRS Form 2688 and that the firm mailed the form to the IRS on August 15, 2000.

Accordingly, we believe that we have demonstrated by a preponderance of this documentary evidence, which includes concurrent and consistent, contemporaneous documentation, that the accounting firm of Harlan & Boettger prepared, processed and timely filed an IRS Form 2688 for the Emmersons. We believe by a preponderance of this documentary evidence that either the extension was not delivered by the

Mr. David Catalini
Mr. Joseph Kennedy
Internal Revenue Service
January 27, 2005
Page 5

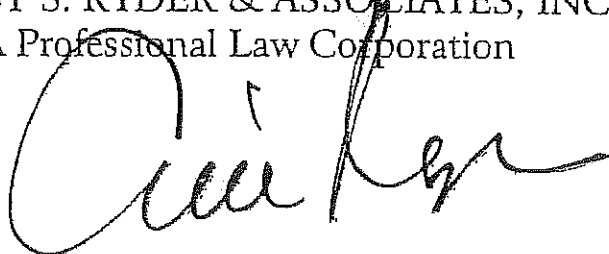
US Postal Service to the IRS, or that the IRS failed to process the extension and return it to the Emmersons. We trust you agree with this conclusion and will not impose any late filing penalty, as well as not accrue any interest beyond the Section 6404(g) time period.

In adopting the penalty provisions to the Internal Revenue Code, Congress was interested in imposing sanctions upon those who willfully disregard or neglect their filing and payment responsibilities and not those who through no fault of their own file their tax returns late. No social or national interest would be served in imposing a penalty in this situation. Accordingly, we feel that any late filing was due to reasonable cause and not to willful disregard or neglect, and that no penalty should be imposed, nor should any additional interest be accrued beyond the Section 6404(g) time period. We trust that you agree with our conclusions.

If you have any questions or comments, or need additional information, please do not hesitate to contact us.

With kindest regards,

ERNEST S. RYDER & ASSOCIATES, INC.
A Professional Law Corporation

A handwritten signature in black ink, appearing to read "Ernest S. Ryder", is written over the printed name.

Ernest S. Ryder

Enclosures

cc: William C. Boettger, CPA

G:\5000s\5261\01\IRS Ltr.wpd

5

DECLARATION UNDER PENALTY OF PERJURY
FOR
WILLIAM C. BOETTGER

DECLARATION OF SIGNOR OF FORM 2688

To whom it may concern:

Under penalties of perjury, I, William C. Boettger, declare that on August 15, 2000 I reviewed, signed, inserted in an envelope addressed to the Internal Revenue Service, Fresno, CA 93888 and placed in the outgoing mail at the offices of Harlan & Boettger, LLP the form 2688, Application for Additional Extension of Time to File U.S. Individual Income Tax Return, for Richard and Helen Emmerson for the tax year 1999.

Further, I declare that on August 15, 2000 all mail that was addressed to the Internal Revenue Service was deposited at the Main Post Office located on Midway Drive in San Diego, CA at approximately 5:00 PM.

I declare that this statement is true, correct and complete.



**William C. Boettger
January 19, 2005**

6

DECLARATION
OF
KIMBERLY M. SWELGIN

The undersigned, KIMBERLY M. SWELGIN, hereby declares the following:

1. I was employed by the accounting firm of Harlan & Boettger from 1990 until March 2003. I started as a receptionist and in 1993 was promoted to the position of Administrative Assistant, responsible for processing tax returns; I was the only person in that position. During June 2000, I graduated from San Diego State University with a Bachelor of Arts Degree in Economics.

2. I specifically recall that at approximately 4:30 p.m. on August 15, 2000, William C. Boettger, CPA walked down the stairs of our two story office building to the mail station where I worked and exclaimed "Don't leave until I give you the Emmerson extension." I then went back to my desk in the mail station area and waited. Shortly thereafter, Mr. Boettger handed me the Emmerson extension in a sealed envelope. I immediately added a stamp to the envelope (I did not use a postage machine), and took the envelope along with an armful of other mail, including other extensions and tax returns, and drove in my Red Honda Civic to the main post office on Midway Drive in San Diego and deposited them all in the drive-thru mail box on or about 5:30 p.m.

3. I specifically recall these events because at that moment in time I was aware and consciously thinking that it would be the last extension and the last time I would have to work on a rush deadline for any tax season, since I was in the process of looking elsewhere for employment, and did not expect to continue working for Harlan & Boettger. My major was in Economics, not Accounting. Nevertheless, I did continue to work for Harlan & Boettger after my graduation and after August 15, 2000, but in

the audit department rather than the tax department. I never had to work a busy tax season again, consistent with my conscious and concurrent thoughts during August 15, 2000.

4. Before I left the offices of Harlan & Boettger to drive to the post office on August 15, 2000, I called my good friends Mikie and Kenra Meyer to let them know that I might be running late since we all planned on having dinner in order to celebrate Mikie's birthday, which was the next day August 16, 2000. After depositing the extension in the drive-thru mail box, I drove to Old Town, San Diego to have dinner at the El Fandango Restaurant. During dinner at the El Fandango Restaurant, we had specific discussions regarding my trip to the post office and the fact that it would be the last time I would have to do so for any busy tax season.

5. When Mr. Boettger mentioned the Emmerson extension, I knew personally who Mr. Emmerson was. While I was a receptionist, Mr. Emmerson would come into the office and I would recognize and greet him. I also knew who Mr. Emmerson was since Debbie Thompson, CPA, a former employee of Harlan & Boettger, went to work for Mr. Emmerson and his company. I knew Mr. Emmerson had a company known as Emmerson Enterprises, Inc. I knew Mr. Emmerson was one of the firm's most valued clients. In addition, I knew Mr. Emmerson lived in Del Mar since I delivered a document package to his house where Debbie Thompson, CPA was then working. I was very familiar with the name Emmerson.

6. I am willing to testify in Tax Court under oath to this effect, if necessary.

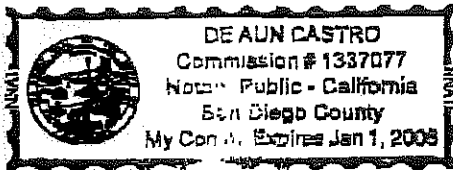
IN WITNESS HEREOF, I hereby declare under penalty and perjury that the foregoing is true and correct. Executed at San Diego, California this 24th day of May, 2005.



KIMBERLY M. SWELGIN

JURAT

State of California
 County of San Diego } ss.



Subscribed and sworn to (or affirmed) before me
 this 24th day of May, 2005 by

(1) Kimberly M. Swelgin
Name of Signer(s)

(2) _____
Name of Signer(s)

Deaun Castro
Signature of Notary Public

OPTIONAL

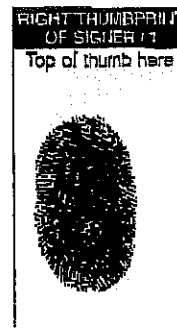
Though the information in this section is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Declaration

Document Date: May 24, 2005 Number of Pages: 2

Signer(s) Other Than Named Above: N/A



7

TAX DOCKETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

TAXPAYER: R. Brent Clark Control Log No. _____
 Address: _____ Entity I C P T O
 Client No: _____
 Phone: Business _____ Home _____ To sign Return _____
 To sign Letter _____
 Planned Delivery Date _____
 Filing Date _____ 1st Extension date _____ 2nd extension date _____

Form required:

	By hand	Computer
Federal		
Federal est.		
California		
CA estimate		
Non-resident		
Extensions		<input checked="" type="checkbox"/>
Gift Tax		<input checked="" type="checkbox"/>
Estate Tax		
Letter	<input checked="" type="checkbox"/>	

Processing:

() Attach labels () Attach AJE's
 () Attach extensions () Attach W-2's
 () Return data to client
 () Attach federal forms to:
 California, _____
 () Type () Form _____ () Pg.1 () Pg.2
 () All _____

SPECIAL PROCESSING INSTRUCTIONS:

ITEMS TO NOTE:

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____

BLUE PENCIL CHANGES:

() Filing Instructions () Fed () CA
 () est inst.

Federal	California
() Page 1	() Page 1
() Page 2	() Page 2

Form or Schedule No.:

Statement No.:

SUMMARY OF RESPONSIBILITY

	Responsibility	Initial Complete	Actual Date	Budget Hours	Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview						
Budget analysis						
Preparation						
Review						
Input						
Approval Review						
Fast Tax check						
Processed						
Subsequent chgs						
igned						
livered	<u>LXN</u>		<u>8/15/00</u>			
TIME						

FOR YEAR ENDED

1999

RIPTION

TAXPAYER: Kelley Control Log No. _____
 Address: _____ Entity ☒ C ☐ P ☐ T ☐ O
 Client No: 184-00
 To sign Return WCB
 To sign Letter 1
 Planned Delivery Date _____
 Filing Date _____ 1st Extension date _____ 2nd extension date _____

Form required:

	By hand	Computer
Federal		
Federal est.		
California		
CA estimate		
Non-resident		
Extensions		<input checked="" type="checkbox"/>
Gift Tax		
Estate Tax		<input checked="" type="checkbox"/>
Letter		

Processing:

() Attach labels () Attach AJE's
 () Attach extensions () Attach W-2's
 () Return data to client
 () Attach federal forms to:
 California, _____
 () Type () Form _____ () Pg.1 () Pg.2
 () All _____

SPECIAL PROCESSING INSTRUCTIONS:ITEMS TO NOTE:

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____
 7. _____

BLUE PENCIL CHANGES:

() Filing Instructions () Fed () CA
 () est inst.

Federal	California
() Page 1	() Page 1
() Page 2	() Page 2

Form or Schedule No.:

Statement No.:

SUMMARY OF RESPONSIBILITY

	Respon- sibility	Initial Complete	Date	Actual Hours	Budget Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview						
Budget analysis						
Preparation	<u>RVC</u>	<u>RM</u>	<u>7/14/08</u>			
Review						
Input						
Approval Review						
Fast Tax check		<u>WCB</u>	<u>8/14</u>			
Processed						
Subsequent chgs						
Return signed						
Mailed/delivered		<u>WCB</u>	<u>8/15</u>			
TOTAL TIME						

FOR YEAR ENDED

12/31/2008

DESCRIPTION

Form 1088 - EXT

TAXPAYER: Rob Tague Control Log No. _____
 Address: _____ Entity I: C P T O
 Client No: _____
 Phone: Business _____ Home _____ To sign Return _____
 To sign Letter _____
 Planned Delivery Date _____
 Filing Date _____ 1st Extension date _____ 2nd extension date _____

Form required:

	By hand	Computer
Federal		<input checked="" type="checkbox"/>
Federal est.		
California		
CA estimate		
Non-resident		
Extensions		<input checked="" type="checkbox"/>
Gift Tax		
Estate Tax		
Letter	<input checked="" type="checkbox"/>	

Processing:

() Attach labels () Attach AJE's
 () Attach extensions () Attach W-2's
 () Return data to client
 () Attach federal forms to:
 California, _____
 () Type () Form _____ () Pg. 1 () Pg. 2
 () All _____

SPECIAL PROCESSING INSTRUCTIONS:

ITEMS TO NOTE:

1. _____
 2. _____
 3. _____
 4. _____
 5. _____
 6. _____
 7. _____

BLUE PENCIL CHANGES:

() Filing Instructions () Fed () CA
 () est. inst.

Federal	California
() Page 1	() Page 1
() Page 2	() Page 2

Form or Schedule No.:

Statement No.:

SUMMARY OF RESPONSIBILITY

	Respon- sibility	Initial Complete	Date	Actual Hours	Budget Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview						
Budget analysis						
Preparation						
Review						
Input						
Approval Review						
Fast Tax check						
Processed						
Subsequent chgs						
igned						
livered	<u>WBT</u>		<u>8/15/00</u>	<u>sent to</u>	<u>DAS 8/15/00</u>	
TIME						

FOR YEAR ENDED

1999

RIPTION

2 EXT

TAX DOCKET

TAXPAYER: R. E. Emerson Control Log No. _____
 Address: _____ Entity I C P T O
 Client No. _____
 To sign Return _____
 To sign Letter _____
 Planned Delivery Date _____
 Phone: Business _____ Home _____ 2nd extension date _____
 Filing Date _____ 1st Extension date _____

Form required:

	By hand	Computer
Federal		
Federal est.		
California		
CA estimate		
Non-resident		
Extensions		<u>X</u>
Gift Tax		
Estate Tax		
Letter		

Processing:

() Attach labels () Attach AJE's
 () Attach extensions () Attach W-2's
 () Return data to client
 () Attach federal forms to:
 California, _____
 () Type () Form () Pg. 1 () Pg. 2
 () All _____

SPECIAL PROCESSING INSTRUCTIONS:

ITEMS TO NOTE:

- _____
- _____
- _____
- _____
- _____
- _____
- _____

BLUE PENCIL CHANGES:

() Filing Instructions () Fed () CA
 () est inst.

Federal	California
() Page 1	() Page 1
() Page 2	() Page 2

Form or Schedule No.:

Statement No.:

SUMMARY OF RESPONSIBILITY

	Respon- sibility	Initial Complete	Actual Date	Budget Hours	Budget Hours	EXPLANATION OF SIGNIFICANT VARIATION FROM BUDGET:
Interview						
Budget analysis						
Preparation						
Review	<u>WGT</u>					
Input						
Approval Review						
Fast Tax check						
Processed						
Subsequent chgs						
Return signed	<u>WGT</u>		<u>8/15/00</u>			
Mailed/Delivered						
TOTAL TIME						

8/15/00
WGT

FOR YEAR ENDED 1999

DESCRIPTION

Screen Extension

8

TRANSMITTAL/INSTRUCTION SHEETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

ROBERT B. & CAROL M. CLARK
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Overpayment..

Your return shows a \$17,942.. overpayment.. Of this amount, \$7,442.. will be refunded to you and \$10,500. has been applied to your 2000 estimated tax.

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
Fresno, CA 93888-0102

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

JAMES L. KELLEY & ELIZABETH A. KELLEY
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Payment of Tax..

A check or money order payable to the "United States Treasury" in the amount of \$12,395. should be enclosed with the return and the 1040-V payment voucher. Your social security number and "1999 Form 1040" should be written on your check or money order.

The amount payable to the IRS includes:

Tax	\$	11,498.
Penalty on underpayment of estimated tax	\$	26.
Penalty for failure to pay 90% of the balance due	\$	345.
Interest	\$	526.

Total amount due to the IRS	\$	12,395.
-----------------------------------	----	---------

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
P.O. Box 60000
Los Angeles, CA 90060-6000

HARLAN & BOETTGER, LLP
 CERTIFIED PUBLIC ACCOUNTANTS
 5415 OBERLIN DRIVE
 SAN DIEGO, CA 92121

ROBERT N. TAGUE
 Instructions For Filing Form
 1040
 U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer.

Payment of Tax..

A check or money order payable to the "United States Treasury" in the amount of \$20,178. should be enclosed with the return and the 1040-V payment voucher. Your social security number and "1999 Form 1040" should be written on your check or money order.

The amount payable to the IRS includes:

Tax	\$	17,993.
Penalty on underpayment of estimated tax	\$	827.
Penalty for failure to pay 90% of the balance due	\$	540.
Interest	\$	818.

Total amount due to the IRS	\$	20,178.
-----------------------------------	----	---------

=====

Filing..

File your signed return by October 15, 2000 with:

Internal Revenue Service Center
 P.O. Box 60000
 Los Angeles, CA 90060-6000

HARLAN & BOETTGER, LLP
CERTIFIED PUBLIC ACCOUNTANTS
5415 OBERLIN DRIVE
SAN DIEGO, CA 92121

RICHARD D. & M. HELEN EMMERSON
Instructions For Filing Form
1040

U.S. Individual Income Tax Return for 1999

Signature..

The original return should be signed (use full name) and dated on page 2 by the taxpayer and spouse.

Overpayment..

Your return shows a \$157,846. overpayment. Of this amount, \$157,846. will be refunded to you and NONE has been applied to your 2000 estimated tax.

Filing..

File your signed return by October 16, 2000 with:

Internal Revenue Service Center
Fresno, CA 93888-0102

APPROVED EXTENSIONS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague

Form **2688**

Application for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

Department of the Treasury
Internal Revenue Service

See instructions on back.

You MUST complete all items that apply to you.

Please type or print.	Your first name and initial	Last name	Your social security number
	ROBERT B	CLARK	[REDACTED]
File by the due date for filing your return.	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
	CAROL M	CLARK	[REDACTED]
Home address (number and street)			
P.O. BOX 2332			
City, town, or post office, state, and ZIP code			
RANCHO SANTA FE, CA 92067			

Please fill in the Return Label at the bottom of this page.

1 I request an extension of time until OCTOBER 16 2000, to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.

2 Explain why you need an extension. You must give an adequate explanation. **ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.**

3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? ☒ Yes ☐ No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.

If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.

4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally due by April 17, 2000, see the instructions and check here ☐ Yourself ☐ Spouse

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer _____ Date _____

Signature of spouse _____ Date _____
(If filing jointly, BOTH must sign even if only one had income)Signature of preparer other than taxpayer William C. Boettger CFA Date 8/14/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

Notice to Applicant	<input type="checkbox"/> We HAVE approved your application.	<p>(Do not detach)</p> <p>EXTENSION TO FILE APPROVED</p> <p>IM GRANTS A 10-DAY GRACE PERIOD FOR PROCESSING CENTER</p>
	<input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____ This grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.	
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided in item 2 above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.	
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return.	
To Be Completed by the IRS	<input type="checkbox"/> Other _____	
Director _____		Date _____

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name.	Taxpayer's social security number
	HARLAN & BOETTGER LLP ROBERT B & CAROL M CLARK	[REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number	Spouse's social security number
	5415 OBERLIN DRIVE	[REDACTED]
City, town, or post office, state, and ZIP code		AGENTS: Always include taxpayer's name on Return Label.
SAN DIEGO, CA 92121		

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

Application for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

Department of the Treasury
Internal Revenue Service

See instructions on back.

You MUST complete all items that apply to you.

Please type or print	Your first name and initial JAMES L	Last name KELLEY	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial ELIZABETH A	Last name KELLEY	Spouse's social security number [REDACTED]
File by the due date for filing your return.	Home address (number and street) 3111 KELLOGG STREET		[REDACTED]
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92106		

Please fill in the Return Label at the bottom of this page.

- I request an extension of time until OCTOBER 16 2000 to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.
- Explain why you need an extension. You must give an adequate explanation.
ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.
- Have you filed Form 4868 to request an automatic extension of time to file for this tax year? ☒ Yes ☐ No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.
- If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.
If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally due by April 17, 2000, see the instructions and check here: Yourself ☐ Spouse ☐

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer _____ Date _____

Signature of spouse _____ Date _____
(if filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer Willi Boettger CPA Date 8/15/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

Notice to Applicant To Be Completed by the IRS	<input checked="" type="checkbox"/> We HAVE approved your application.	<p>(Do not detach)</p> <p>EXTENSION TO FILE APPROVED</p> <p>THIS GRACE PERIOD IS</p> <p>IRSA COMPLIANCE DIRECTOR</p> <p>10-DAY GRACE PERIOD</p> <p>PROCESSING CENTER</p>
	<input type="checkbox"/> We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____ this grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.	
	<input type="checkbox"/> We HAVE NOT approved your application. After considering the information you provided in item 2, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.	
	<input type="checkbox"/> We cannot consider your application because it was filed after the due date of your return.	
	<input type="checkbox"/> Other _____	

Director

Date

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP JAMES L KELLEY & ELIZABETH A KELLEY	Taxpayer's social security number [REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE	Spouse's social security number [REDACTED]
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121	AGENTS: Always include taxpayer's name on Return Label.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

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Form 2688 (1999)

018
Form 2688Application for Additional Extension of Time To File
U.S. Individual Income Tax Return

OMB No. 1545-0066

1999

Department of the Treasury
Internal Revenue Service

See instructions on back.

You MUST complete all items that apply to you.

Please type or print.	Your first name and initial ROBERT N	Last name TAGUE	Your social security number [REDACTED]
	If a joint return, spouse's first name and initial	Last name	Spouse's social security number
File by the due date for filing your return.	Home address (number and street)		[REDACTED]
	City, town, or post office, state, and ZIP code		

Please fill in the Return Label at the bottom of this page.

- 1 I request an extension of time until OCTOBER 16 2000 to file Form 1040EZ, Form 1040A, Form 1040, Form 1040NR-EZ, or Form 1040NR for the calendar year 1999, or other tax year ending _____.
- 2 Explain why you need an extension. You must give an adequate explanation.
ADDITIONAL TIME IS NEEDED TO GATHER THE INFORMATION NECESSARY TO FILE A COMPLETE AND ACCURATE RETURN.
- 3 Have you filed Form 4868 to request an automatic extension of time to file for this tax year? ☒ Yes ☐ No
If you checked "No," we will grant your extension only for undue hardship. Fully explain the hardship in item 2. Attach any information you have that helps explain the hardship.
- If you expect to have to file a gift or generation-skipping transfer (GST) tax return, complete line 4.
- 4 If you or your spouse plan to file a gift or GST tax return (Form 709 or 709-A) for 1999, generally due by April 17, 2000, see the instructions and check here
- | | |
|--|--|
| Yourself <input type="checkbox"/>
Spouse <input type="checkbox"/> | Yourself <input type="checkbox"/>
Spouse <input type="checkbox"/> |
|--|--|

Signature and Verification

Under penalties of perjury, I declare that I have examined this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete; and, if prepared by someone other than the taxpayer, that I am authorized to prepare this form.

Signature of taxpayer _____ Date _____

Signature of spouse _____ Date _____
(If filing jointly, BOTH must sign even if only one had income)

Signature of preparer other than taxpayer L. William Boettger CPA Date 8/15/00

Please fill in the Return Label below with your name, address, and social security number. The IRS will complete the Notice to Applicant and return it to you. If you want it sent to another address or to an agent acting for you, enter the other address and add the agent's name.

(Do not detach)

Notice to
ApplicantTo Be
Completed
by the IRS

- ☒ We HAVE approved your application.
- ☐ We HAVE NOT approved your application. However, we have granted a 10-day grace period to _____. This grace period is considered a valid extension of time for elections otherwise required to be made on a timely return.
- ☐ We HAVE NOT approved your application. After considering the information you provided in item 2 above, we cannot grant your request for an extension of time to file. We are not granting a 10-day grace period.
- ☐ We cannot consider your application because it was filed after the due date of your return.
- ☐ Other _____

**EXTENSION TO FILE
APPROVED****DIRECTOR**

Director

Date

Return Label (Please type or print)	Taxpayer's name (and agent's name, if applicable). If a joint return, also give spouse's name. HARLAN & BOETTGER LLP ROBERT N TAGUE		Taxpayer's social security number [REDACTED]
	Number and street (include suite, room, or apt. no.) or P.O. box number 5415 OBERLIN DRIVE		Spouse's social security number
	City, town, or post office, state, and ZIP code SAN DIEGO, CA 92121		AGENTS: Always include taxpayer's name on Return Label.

For Privacy Act and Paperwork Reduction Act Notice, see back of form.

Form 2688 (1999)

10

BILLING WORKSHEET/TIMESHEETS

FOR

Robert B. Clark
James L. Kelley
Robert M. Tague
Richard & Helen Emmerson

Billing WorkSheet By Bill Manager

Boettger, Bill (2)
For the Period: 1/1/1990 - 8/15/2000

019901	Phone	FYE	WIP	Progress	Net WIP	A/R Balance
Robert & Carol Clark (0)	702 898-9748	Dec	92.50	0.00	92.50	0.00
Work in Progress - Robert & Carol (0) -						
Tax Ind 223 Extensions	Boettger	8/15/2000				
			Cost	Hours	Amount	
			0.00	0.50	92.50	92.50
		Ind Totals:	0.00	0.50	92.50	92.50
		Tax Totals:	0.00	0.50	92.50	92.50
		Totals:	0.00	0.50	92.50	92.50
		019901 Totals:	0.00	0.50	92.50	92.50
Service Code Summary						
BY SERVICE CODE	Tax Ind 223	Extensions				
			0.00	0.50	92.50	92.50

Service Code Summary

BY SERVICE CODE		Tax					223		Extensions	
	Cur Yr History	Jan	Feb	Mar	Apr	May	Jun			
	Production	0.00	0.00	0.00	135.00	0.00	0.00		0.00	
	Billing	0.00	0.00	0.00	65.00	0.00	0.00		0.00	
	Payments	-600.00	0.00	-500.00	0.00	-65.00	0.00		0.00	

NO BR AGING as of 8/15/2000

WIP AGING as of 8/15/2000	Current	31-60	61-90	91-120	Over 120	Balance
Robert & Carol Clark (0)	92.50	0.00	0.00	0.00	0.00	92.50

WIP AGING as of 8/15/2000

Author	1990	1995	2000	2005	2010
Robert & Carol Clark (1)	92.50	0.00	0.00	0.00	92.50

Billing WorkSheet By Bill Manager

Boettger, Bill (2)

For the Period: 1/1/1990 - 8/15/2000

Phone	FYE	WIP	Progress	Net WIP	A/R Balance
018400	Dec	24.00	0.00	24.00	0.00
James & Elizabeth Kelley (0)					
Work In Progress - James & Elizabe (0) -					
Tax Ind 223 Extensions					
8/14/2000		0.00	0.50	24.00	24.00
Ind Totals:		0.00	0.50	24.00	24.00
Tax Totals:		0.00	0.50	24.00	24.00
Totals:		0.00	0.50	24.00	24.00
018400 Totals:		0.00	0.50	24.00	24.00

Service Code Summary

BY SERVICE CODE		Tax	Ind	223	Extensions										Total
	Curr Yr History	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec		
	Production	0.00	0.00	0.00	657.50	922.50	0.00	0.00	24.00	0.00	0.00	0.00	0.00	1604.00	
	Billing	0.00	0.00	0.00	700.00	0.00	400.00	0.00	0.00	0.00	0.00	0.00	0.00	1100.00	
	Payments	0.00	0.00	0.00	0.00	0.00	-700.00	-400.00	0.00	0.00	0.00	0.00	0.00	-1100.00	
											0.00	0.50		24.00	

NO AB AGING as of 8/15/2000

WIP AGING as of 8/15/2000

	Current	31-60	61-90	91-120	Over 120	Balance
WIP AGING as of 8/15/2000						
James & Elizabeth Kelley (0)	24.00	0.00	0.00	0.00	0.00	24.00

Billing WorkSheet By Bill Manager

Harlan & Boettger, LLP

Boettger, Bill (2)

For the Period: 1/1/1990 - 8/15/2000

WIP	Progress	Net WIP	A/R Balance
16.25	0.00	16.25	0.00
	Cost	Hours	Amount
	0.00	0.25	16.25
	<u>0.00</u>	<u>0.25</u>	<u>16.25</u>
	0.00	0.25	16.25
	0.00	0.25	16.25
	0.00	0.25	16.25

ckf

Work In Progress - Robert Tague (0) -

Tax	Ind	223 Extensions
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Kinniard

8/14/2000

Memo

070610

Robert Tague (0)

Ind Totals:

Tax Totals:

Totals:

019008 Totals:

Service Code Summary

BY SERVICE CODE

Page 55
Exhibit A

BY SERVICE CODE	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Cur Yr Hlstory	0.00	0.00	0.00	0.00	0.00	0.00	0.00	16.25	0.00	0.00	0.00	0.00	16.25
Production	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Billing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Payments	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
										0.00	0.25		16.25

NO AR AGING as of 8/15/2000

WIP AGING as of 8/15/2000

Robert Taque (0)

Over 120	Balance
100	100
110	110
120	120
130	130
140	140
150	150
160	160
170	170
180	180
190	190
200	200
210	210
220	220
230	230
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300	300
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360	360
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500	500
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700	700
710	710
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740	740
750	750
760	760
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780	780
790	790
800	800
810	810
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830	830
840	840
850	850
860	860
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Harlan & Boettger, LLP
Billing Worksheet By Bill Manager

Boettger, Bill (2)
 For the Period: 1/1/1990 - 8/15/2000

Aug 24, 2000

1:33:37 PM

Phone 619 792-5728
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 WIP 191.55
 Progress 0.00
 Net WIP 191.55
 A/R Balance 0.00

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Richard & M. Helen Emmer (0)

Work In Progress - Richard & M. He (0)

Expn Exp 802 Courier charges

Boettger

7/20/2000

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Oct-05-2005 02:26pm From-MURPHY PEARSON BRADLEY FEENEY

T-850 P.002/003 F-815

Form **2848**
(Rev. March 2004)
Department of the Treasury
Internal Revenue Service

Power of Attorney and Declaration of Representative

Type or print. See the separate instructions.

OMB No. 1545-0140

For IRS Use Only

Received by:

Name

Telephone

Function

Date

Part I Power of Attorney

Caution: Form 2848 will not be honored for any purpose other than representation before the IRS.

Taxpayer(s) must sign and date this form on page 2, line 9.

1 Taxpayer Information. Taxpayer(s) must sign and date this form on page 2, line 9.	Social security number(s) [REDACTED] [REDACTED]	Employer identification number
Taxpayer name(s) and address RICHARD D. EMMERSON M. HELEN EMMERSON 4612 RANCHO REPOSO DEL MAR, CA 92014-4201	Daytime telephone number ()	Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address DAVID M. GIBBS 4180 RUFFIN ROAD, SUITE 235 SAN DIEGO, CA 92123	CAF No. 0200-73109R SSN Telephone No. 858-535-2000 Fax No. 858-571-2700 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address ARTHUR PEARSON 88 KEARNEY STREET, 10TH FLOOR SAN FRANCISCO, CA 94108	CAF No. 9000-20006T SSN Telephone No. 415-788-1900 Fax No. 415-393-8087 Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>
Name and address	CAF No. SSN Telephone No. Fax No. Check if new: Address <input type="checkbox"/> Telephone No. <input type="checkbox"/> Fax No. <input type="checkbox"/>

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s) (see the instructions for line 3)
Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (see the instructions for line 3)		
INCOME	1040	1999, 2000, 2001
THE ACTS AUTHORIZED BY THIS POWER OF ATTORNEY INCLUDE REPRESENTATION FOR THE PURPOSES OF SUBCHAPTER C OF CHAPTER 63 OF THE INTERNAL REVENUE CODE.		

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. Specific uses not recorded on CAF. ☐

5 Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the power to sign certain returns, or the power to execute a request for disclosure of tax returns or return information to a third party. See the line 5 instructions for more information.

Exceptions. An unenrolled return preparer cannot sign any document for a taxpayer and may only represent taxpayers in limited situations. See Unenrolled Return Preparer on page 2 of the instructions. An enrolled actuary may only represent taxpayers to the extent provided in section 10.3(d) of Circular 230. See the line 5 instructions for restrictions on tax matters partners.

List any specific additions or deletions to the acts otherwise authorized in this power of attorney:

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.

Name of representative to receive refund check(s) ▶

For Privacy Act and Paperwork Reduction Notice, see page 4 of the instructions.

Cat. No. 11960J

Form 2848 (Rev. 3-2004)

Oct-05-2006 02:27pm From: MURPHY PEARSON BRADLEY FEENEY

T-850 P.003/003 F-815

Page 2

Form 2848 (Rev. 3-2004)

- 7 **Notices and communications.** Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2.
- a If you also want the second representative listed to receive a copy of notices and communications, check this box ☐
- b If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 **Retention/revocation of prior power(s) of attorney.** The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☒
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 **Signature of taxpayer(s).** If a tax matter concerns a joint return, both husband and wife must sign. If joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- ▶ IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Richard D. Emerson Signature Date 9-27-05 Title (if applicable) _____

RICHARD D. EMMERSON Print Name ☐☐☐☐☐ PIN Number _____ Print name of taxpayer from line 1 if other than individual

M. Helen Emerson Signature Date 9-27-05 Title (if applicable) _____

M. HELEN EMMERSON Print Name ☐☐☐☐☐ PIN Number _____

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the instructions for Part II.

Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—the authority to practice before the Internal Revenue Service is limited by Treasury Department Circular No. 230, section 10.7(c)(1)(viii). You must have prepared the return in question and the return must be under examination by the IRS. See Unenrolled Return Preparer on page 2 of the instructions.

▶ IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED. See the Part II instructions.

Designation—insert above letter (a–h)	Jurisdiction (state) or identification	Signature	Date
B	CA	<u>[Signature]</u>	<u>9/27/05</u>
A	CA	<u>[Signature]</u>	<u>9/27/05</u>

Form 2848 (Rev. 3-2004)

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PAGE 02

Form **2848**
(Rev. January 2002)
Department of the Treasury
Internal Revenue Service

**Power of Attorney
and Declaration of Representative**

See the separate instructions.

COMPLETED
MAMC CAF DEPT

OMB No. 1545-0150

For IRS Use Only

Received by:

Name D. CATALINITelephone (22) 237-4088Function EMMDate 10/9/03**Part I** Power of Attorney (Type or print.)**1** Taxpayer information. Taxpayer(s) must sign and date this form on page 2, line 9.

Taxpayer name(s) and address

Richard D. & M. Helen Emmerson
4612 Rancho Reposo
Del Mar, CA 92014-4201

Social security number(s)

[REDACTED]

[REDACTED]

Daytime telephone number

[REDACTED]

Employer identification number

Plan number (if applicable)

hereby appoint(s) the following representative(s) as attorney(s)-in-fact:

2 Representative(s) must sign and date this form on page 2, Part II.

Name and address

William C. Boettger
5415 OBERCA DR.
SAN DIEGO, CA 92121

CAF No. 9000-43150Telephone No. 858-535-2000Fax No. 858-535-2015Check if new: Address ☐ Telephone No. ☐

Name and address

ERNEST S. RYDER
101 WEST BROADWAY, SUITE 1400
SAN DIEGO, CALIFORNIA 92101

CAF No. 015-233-7000Telephone No. 619-233-7000Fax No. 619-233-1214Check if new: Address ☐ Telephone No. ☐

Name and address

CAF No. _____

Telephone No. _____

Fax No. _____

Check if new: Address ☐ Telephone No. ☐

to represent the taxpayer(s) before the Internal Revenue Service for the following tax matters:

3 Tax matters

Type of Tax (Income, Employment, Excise, etc.) or Civil Penalty (See the instructions for line 3.)	Tax Form Number (1040, 941, 720, etc.)	Year(s) or Period(s)
INCOME TAXES	1040	December 31, 1999
"The acts authorized by this power of attorney include representation for the purposes of Subchapter C of Chapter 63 of the Internal Revenue Code."	1040, 1065, 1120S	December 31, 1999

4 Specific use not recorded on Centralized Authorization File (CAF). If the power of attorney is for a specific use not recorded on CAF, check this box. See the instructions for Line 4. **Specific uses not recorded on CAF.** ☐**5** Acts authorized. The representatives are authorized to receive and inspect confidential tax information and to perform any and all acts that I (we) can perform with respect to the tax matters described on line 3, for example, the authority to sign any agreements, consents, or other documents. The authority does not include the power to receive refund checks (see line 6 below), the power to substitute another representative, the authority to execute a request for a tax return, or a consent to disclose tax information unless specifically added below, or the power to sign certain returns. See the instructions for Line 5. **Acts authorized.**

List any specific additions or deletions to the acts otherwise authorized in this power of attorney: _____

Note: In general, an unenrolled preparer of tax returns cannot sign any document for a taxpayer. See Revenue Procedure 87-38, printed as Pub. 470, for more information.

Note: The tax matters partner of a partnership is not permitted to authorize representatives to perform certain acts. See the separate instructions for more information.

6 Receipt of refund checks. If you want to authorize a representative named on line 2 to receive, BUT NOT TO ENDORSE OR CASH, refund checks, initial here _____ and list the name of that representative below.Name of representative to receive refund check(s) ☐

For Paperwork Reduction and Privacy Act Notice, see the separate instructions.

Cal. No. 11980J

Form 2848 (Rev. 1-2002)

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Form 2848 (Rev. 1-2002)

Page 2

- 7 Notices and communications. Original notices and other written communications will be sent to you and a copy to the first representative listed on line 2 unless you check one or more of the boxes below.
- a If you want the first representative listed on line 2 to receive the original, and yourself a copy, of such notices or communications, check this box ☐
- b If you also want the second representative listed to receive a copy of such notices and communications, check this box. ☐
- c If you do not want any notices or communications sent to your representative(s), check this box ☐
- 8 Retention/revocation of prior power(s) of attorney. The filing of this power of attorney automatically revokes all earlier power(s) of attorney on file with the Internal Revenue Service for the same tax matters and years or periods covered by this document. If you do not want to revoke a prior power of attorney, check here. ☐
- YOU MUST ATTACH A COPY OF ANY POWER OF ATTORNEY YOU WANT TO REMAIN IN EFFECT.**
- 9 Signature of taxpayer(s). If a tax matter concerns a joint return, both husband and wife must sign if joint representation is requested, otherwise, see the instructions. If signed by a corporate officer, partner, guardian, tax matters partner, executor, receiver, administrator, or trustee on behalf of the taxpayer, I certify that I have the authority to execute this form on behalf of the taxpayer.
- IF NOT SIGNED AND DATED, THIS POWER OF ATTORNEY WILL BE RETURNED.

Richard Emmers 10-1-03 _____
Signature Date Title (if applicable)

Richard Emmers
Print Name

M. Helen Emmers 10-1-03 _____
Signature Date Title (if applicable)

M. HELEN EMMERS
Print Name

Part II Declaration of Representative

Caution: Students with a special order to represent taxpayers in Qualified Low Income Taxpayer Clinics or the Student Tax Clinic Program, see the separate instructions for Part II.

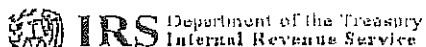
Under penalties of perjury, I declare that:

- I am not currently under suspension or disbarment from practice before the Internal Revenue Service;
- I am aware of regulations contained in Treasury Department Circular No. 230 (31 CFR, Part 10), as amended, concerning the practice of attorneys, certified public accountants, enrolled agents, enrolled actuaries, and others;
- I am authorized to represent the taxpayer(s) identified in Part I for the tax matter(s) specified there; and
- I am one of the following:
 - a Attorney—a member in good standing of the bar of the highest court of the jurisdiction shown below.
 - b Certified Public Accountant—duly qualified to practice as a certified public accountant in the jurisdiction shown below.
 - c Enrolled Agent—enrolled as an agent under the requirements of Treasury Department Circular No. 230.
 - d Officer—a bona fide officer of the taxpayer's organization.
 - e Full-Time Employee—a full-time employee of the taxpayer.
 - f Family Member—a member of the taxpayer's immediate family (i.e., spouse, parent, child, brother, or sister).
 - g Enrolled Actuary—enrolled as an actuary by the Joint Board for the Enrollment of Actuaries under 29 U.S.C. 1242 (the authority to practice before the Service is limited by section 10.3(d)(1) of Treasury Department Circular No. 230).
 - h Unenrolled Return Preparer—an unenrolled return preparer under section 10.7(c)(1)(vii) of Treasury Department Circular No. 230.

► IF THIS DECLARATION OF REPRESENTATIVE IS NOT SIGNED AND DATED, THE POWER OF ATTORNEY WILL BE RETURNED.

Designation—insert above letter (a-h)	Jurisdiction (state) or Enrollment Card No.	Signature	Date
b	CPA CA	<u>William C. Barger</u>	<u>9/30/03</u>
a	CDUF	<u>Cecil Key</u>	<u>9.30.2003</u>

Form 2848 (Rev. 1-2002)



Department of the Treasury
Internal Revenue Service

PO BOX 236
MEMPHIS TN 38101-0236

71073514697480566173

In reply refer to: 0342120946

Aug. 14, 2006 LTR 105C E1

[REDACTED] 199912 30 000 1

00074

BODC: SB

RICHARD D & M HELEN EMMERSON
% DAVID M GIBBS
5415 OBERLIN DR
SAN DIEGO CA 92121-1716

CERTIFIED MAIL

Taxpayer Identification Number: [REDACTED]
Kind of Tax: 1040
Date of Claim(s) Received: Mar. 16, 2006
Tax Period : Dec. 31, 1999

WE COULDN'T ALLOW YOUR CLAIM

Dear Richard & Helen Emmerson:

WHY WE'RE SENDING YOU THIS LETTER

This letter is your notice that we've disallowed your claim for credit for the period shown above.

WHY WE CANNOT ALLOW YOUR CLAIM

We have enclosed Form 886-A, Explanations of Items, to explain the reason for disallowance of claim.

IF YOU DISAGREE

You have the right to appeal our decision to disallow your claim. You may represent yourself before Appeals. You may have an attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service represent you. To have someone represent you, attach Form 2848, Power of Attorney and Declaration of Representative, (or similar written power of attorney) to your written statement.

You may request a small dollar case appeal for a disallowed claim that is less than \$25,000 or prepare a formal protest for a disallowed claim over \$25,000.

To request a small dollar case appeal for a claim, do the following:

1. State that you want to appeal.
2. List the disallowed items you disagree with and why you don't agree with each item.
3. Provide your name, address, taxpayer identification number, daytime telephone number, and a copy of this letter.
4. Mail your appeal request to the address shown on this letter.

0342120946
Aug. 14, 2006 LTR 105C E1
[REDACTED] 199912 30 000 1
00076

RICHARD D & M HELEN EMMERSON
% DAVID M GIBBS
5415 OBERLIN DR
SAN DIEGO CA 92121-1716

Court having jurisdiction or with the United States Claims Court. These courts are part of the judiciary branch of the federal government and have no connection with the Internal Revenue Service.

The law permits you to do this within 2 years from the date of this letter. If you decide to appeal our decision first, the 2-year period still begins from the date of this letter. However, if you signed an agreement that waived your right to the notice of disallowance (Form 2297), the period for filing suit begins on the date you filed the waiver.

You may request an appeal, a hearing, or a meeting to disagree with any examination action. However, we will not allow an appeal in cases of failure or refusal to comply with tax laws because of moral, religious, political, constitutional, conscientious, or similar grounds.

HOW TO CONTACT US

If you have any questions, please call us toll free at 1-800-829-8374.

If you prefer, you may write to us at the address shown at the top of the first page of this letter.

Whenever you write, please include this letter and, in the spaces below, give us your telephone number with the hours we can reach you. Also, you may want to keep a copy of this letter for your records.

Telephone Number () _____ Hours _____

Civil No. 08-CV-1439 W (WMc)

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Redacted Complaint for Refund and Abatement of Tax was this date served upon the United States Attorney's Office Southern District of California Civil Division electronically through the United States District Court for the Southern District of California CM/ECF system. I also certify that a copy of the foregoing Redacted Complaint for Refund and Abatement of Tax was this date sent by United States Mail, postage prepaid, certified return receipt requested, to the Attorney General of the United States in Washington, D.C., the Internal Revenue Service in Washington, D.C. and the Internal Revenue Service in Laguna Niguel, California, at the following addresses:

U.S. Department of Justice
Attorney General's Office
Attn: Tax Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Department of the Treasury
Internal Revenue Service
Attn: Office of General Counsel
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Department of the Treasury
Internal Revenue Service
24000 Avila Road
Laguna Niguel, CA 92677

San Diego, CA this 27th day of August, 2008.

s/ Lauren A. Rinsky
Lauren A. Rinsky,
Attorney for Plaintiffs